

MINUTES OF THE BOARD OF APPEALS  
TOWN OF ANDOVER, MASSACHUSETTS

Memorial Hall Library, Elm Sq., Andover

March 1, 2006

**APPROVED 4-5-07**

There were present: McDonough – Acting Chair, Reilly, Bevacqua, Brown. Meeting opened at 7:12 p.m.

PETITION NO.: 3676

PETITIONER: Soltes

PREMISES AFFECTED: 16 Arundel St.

Due to a lack of quorum, the Board received an agreement from the Petitioners to continue the hearing to the 4/5/07 meeting as well as granting an extension to 5/3/07. Reilly made a motion to continue the hearing to 4/5/007. Bevacqua seconded the motion & the Board voted (4-0) to allow the continuance.

PETITION NO.: 3683

PETITIONER: Iannicelli

PREMISES AFFECTED: 103 Summer St.

Due to a lack of quorum, the Board received an agreement from the Petitioners to continue the hearing to the 4/5/07 meeting as well as granting an extension to 5/3/07. Reilly made a motion to continue the hearing to 4/5/007. Bevacqua seconded the motion & the Board voted (3-0) to allow the continuance. Brown abstained.

PETITION NO.: 3685

PETITIONER: Putman Investments

PREMISES AFFECTED: 7 Shattuck Rd.

The Board received a request from the Petitioners to continue & open the hearing at the 4/5/07 meeting due to a lack of Board members (4 instead of 5), as well as an extension to 5/3/07 for the Board to act on the petition. Bevacqua made a motion to continue & open the hearing on 4/5/07. Reilly seconded the motion & the Board voted (4-0) to grant the continuance.

PETITION NO.: 3687

PETITIONER: Butler

PREMISES AFFECTED: 8 Foster's Pond Rd.

Due to a lack of quorum, the Board received an agreement from the Petitioners to continue the hearing to the 4/5/07 meeting as well as granting an extension to 5/3/07. Reilly made a motion to continue the hearing to 4/5/007. Bevacqua seconded the motion & the Board voted (3-0) to allow the continuance. Brown abstained.

PETITION NO.: 3684

PETITIONER: River Road Veterinary Hospital

PREMISES AFFECTED: 176 River Rd.

Attorney Andrew Caffrey Jr. represented the petitioners in their request to renew the prior approvals granted under Decision No. 3544 to construct a veterinary hospital. They appeared before Town Meeting to exclude the property from the Watershed Protection Overlay District as well as the Board of Health for a sewer pump. Bevacqua pointed out that the previous decision referenced section 3.1.3, but not the current advertisement.

March 1, 2007

MINUTES OF THE BOARD OF APPEALS  
TOWN OF ANDOVER, MASSACHUSETTS

Caffrey stated that he didn't feel it was necessary because the prior decision stated the use was allowed. Bevacqua also asked why they added section 5.1.8 for the parking lot & landscaping to buffer from abutting residential uses. Caffrey added that they are requesting the variance due to the extensive wetlands. They are in the Site Plan review process with Planning (4/10/07 meeting). The parking & driveway have changed & the basement was eliminated from the previously approved plan due to wetlands. Reilly made a motion to close the public hearing. Bevacqua seconded the motion & the Board voted (4-0) to close the public hearing. The Board waived a site view. Brown made a motion to find that the conditions & circumstances are as represented & to reaffirm the previous decision & grant the same variances. Bevacqua & McDonough agreed. The Board voted (4-0) to approve the petition. Brown will write the decision.

Bevacqua made a motion to approve the minutes of the February 1, 2007 meeting. Reilly seconded the motion & the Board voted (4-0) to approve the February 1, 2007 minutes.

Town Counsel Thomas Urbelis, Esq. summarized M.G.L. Ch. 44 section 53G regarding Rule/Regulation for Consultant Fees stating that it would allow the Board to adopt a regulation requiring the applicant to pay for consultants, peer reviews & technical fees and that the Board could require this. Bevacqua made a motion to adopt M.G.L. Ch. 44 section 53G. Brown seconded the motion & the Board voted (4-0) to adopt M.G.L. Ch. 44 section 53G.

PETITION NO.: 3685

PETITIONER: RK Trust

PREMISES AFFECTED: 7 Connector Rd.

Gene Sullivan, Engineer, represented the petitioner's request for a variance to construct an addition that will not meet setback requirements. The proposed 30,000 sq. ft. addition to Reed Graphics will not meet the rear setback, but will be in line with the existing building. They will need Site Plan review & Conservation review. The existing structure is approximately 30 years old. Reilly asked how the existing building became non-conforming. Sullivan was unsure. Brown suggested that the key is the railroad siding (section 4.1.4.3.c), which is exempt for its proximity to the railroad. Since the railroad is not in service, they require a variance. Additionally, the current use never used the rail service. Brown asked why the addition isn't designed to conform. Sullivan explained that due to the wetlands on the other side of the lot, the 50' no build zone restricts its placement. The plan shows the maximum footprint, but it may change due to Conservation input. The maximum square footage will not exceed 29,000 sq. ft. Bevacqua suggested if approved, to write the decision with flexibility for the footprint not to exceed 29,000 sq. ft. & with a minimum rear setback of 17'. Bevacqua asked if the number of employees increases, would they be able to meet parking requirements. Sullivan stated that it is designed to meet such growth with the option of converting green space to parking if necessary. Bevacqua made a motion to close the public hearing. Reilly seconded the motion & the Board voted (4-0) to close the hearing. The Board waived a site view. Bevacqua stated that he had no problem with the proposal. Brown agreed, adding that due to the presence of wetlands as a topographical hardship, he could vote to grant the variance. Brown made a motion to find that a hardship exists due to wetlands & to grant the variance. Bevacqua seconded the motion & the Board voted (4-0) to grant the variance. Brown will write the decision.

PETITIONER: Lundstrom

PREMISES AFFECTED: 429-431 South Main St.

BOARD MEMBERS: Anderson, McDonough, Brown, Reilly

March 1, 2007

MINUTES OF THE BOARD OF APPEALS  
TOWN OF ANDOVER, MASSACHUSETTS

Town Counsel Thomas Urbelis was present. Attorney Michael Rosen represented the petitioner, giving an overview of the proceedings to date pointing out that the lawsuit is still pending. Tonight they wish to discuss a settlement proposal (received 2/23/07 in a letter dated 2/20/07 from Rosen). Rosen outlined three options for the site: 1. Litigate in court: if they win it will be a gas station with a Dunkin' Donuts, if they lose they will come back to the Board with the same proposal. 2. Ask the judge to extend: without litigation & go back to the Board with the same proposal. 3. Dismiss with prejudice (this evening's discussion): same as #1 & #2 – asking the Board to confirm that the special permits are valid & operative & that the clock was tolled due to the appeal. In this case, the gas station, dunkin' donuts & drive through go away, the rights shouldn't be abandoned & won't lapse.

Petitioner currently has a buyer who wants confirmation of those rights before they come to the Board with a more viable option. Rosen asked the Board to recognize that the appeal tolled the clock. Anderson asked Rosen to clarify his request of the Board. Rosen paraphrased his letter of 2/2/07 regarding the stipulation 'that all rights... are hereby reaffirmed...' McDonough asked if the site is still contaminated. Rosen pointed out that an AUL is on file, in which it states that the lot cannot be used residentially, as a school or playground. Brown asked whether the AUL encompasses the entire site. It affects approximately 10-20% of the site, where the buildings now stand.

Anderson noted for the record Attorney Lonergan's letter dated & received 3/1/07.

March 1, 2007